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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GOVERNMENT EMPLOYEES INSURANCE COMPANY, Plaintiff, Cross-defendant and Respondent, v. TOWER GLASS, INC., et al., Defendants, Cross-complainants and Appellants.	D051649 (Super. Ct. No. GIC851602)
TOWER GLASS, INC., Petitioner, v. THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent;	D051846 (Super. Ct. No. GIC851602)
GOVERNMENT EMPLOYEES INSURANCE COMPANY, Real Party in Interest.	

APPEALS from a judgment of the Superior Court of San Diego County, Luis R. Vargas, Judge. Appeal dismissed; petition for a peremptory writ of mandate denied.

Tower Glass, Inc. (Tower Glass) and Collins General Contractors (Collins) appeal from judgments dismissing their cross-complaints against Government Employees Insurance Company (GEICO) in the construction defect litigation that GEICO brought against them. Tower Glass also (1) appeals from the trial court's order imposing sanctions on its attorneys under Code of Civil Procedure section 128.7; and (2) has filed a petition for a peremptory writ of mandate, requesting that in the event we conclude we lack jurisdiction over its appeal, that we grant writ relief with respect to the issues raised in the appeal. We have consolidated the writ petition with the appeal.

First, as we will explain, we conclude that we lack jurisdiction over Tower Glass's and Collins's appeals from the judgments dismissing their cross-complaints as to GEICO because those judgments are not final and appealable. Because of GEICO's construction defect complaint, claims are still pending in the litigation between GEICO and both Tower Glass and Collins. Second, we conclude that Tower Glass lacks standing to appeal from the order imposing sanctions on its attorneys. Finally, we conclude that extraordinary relief is not warranted with respect to the issues raised by Tower Glass, and accordingly we deny Tower Glass's petition for a peremptory writ of mandate.

I

FACTUAL AND PROCEDURAL BACKGROUND

A. *GEICO Files a Lawsuit Against Collins, Tower Glass and Others Alleging Construction Defects*

GEICO filed a lawsuit against several parties alleging the existence of construction defects in its newly-constructed regional headquarters building in Poway (the Project).[1] GEICO sued the architect of the building, the general contractor on the Project, as well numerous material suppliers and subcontractors, asserting causes of action for negligence and breach of express and implied warranty.[2] GEICO alleged, among other things, that the building envelope was defectively constructed, leading to water intrusion. Collins was the general contractor on the Project, and Tower Glass was the subcontractor that installed the translucent panel wall system, the window wall system, the storefront window system and certain exterior glass and glazing.

B. *Collins and Tower Glass File Cross-complaints Against GEICO and Others*

Tower Glass and Collins both filed cross-complaints against numerous cross-defendants, including GEICO. Tower Glass and Collins based their claims against GEICO on GEICO's administration of the Owner Controlled Insurance Program (OCIP)

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1 Only GEICO's second amended complaint appears in the appellate record. Thus, we rely on that document for our description of GEICO's allegations.

2 GEICO also sued certain material suppliers for strict liability, insurance companies who acted as sureties by issuing performance bonds to the general contractor, and J&H Marsh & McLennan, Inc. (Marsh), which performed insurance brokerage services for GEICO for breach of contract, negligence, express indemnity and declaratory relief.

at the Project. Under the OCIP, GEICO agreed to provide the contractors and subcontractors on the Project with commercial general liability (CGL) and excess liability insurance, workers' compensation insurance and builder's risk insurance. GEICO instructed the general contractor that because insurance was being provided through the OCIP, it should not include the cost of insurance in its total bid price for the project. Although the construction of the Project was apparently completed in 1999, the OCIP was to provide completed operations coverage for three years after construction ended. Reliance National Indemnity Company (Reliance) was the primary CGL carrier under the OCIP.

As the basis for their cross-complaints against GEICO, Collins and Tower Glass allege that Reliance became insolvent and liquidated in October 2001, and that, accordingly, the contractors and subcontractors on the Project are not covered under the OCIP for the construction defect claims asserted by GEICO. Further, according to Collins's and Tower Glass's allegations, although the OCIP provided excess coverage through a different carrier, that coverage also is unavailable because of Reliance's insolvency.[3]

1. *The Litigation of Collins's Cross-complaint*

Collins's first amended cross-complaint alleged causes of action for negligence and breach contract against GEICO. Collins alleged that GEICO was negligent and also

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[3] Nevertheless, according to Tower Glass and Collins, they are obtaining a defense against GEICO's claims from their own insurance carriers under a reservation of rights.

breached its agreement to procure insurance under the OCIP because, among other things, (1) it obtained primary insurance from a carrier that became insolvent; (2) it did not obtain replacement coverage once Reliance's financial stability was publicly called into question; and (3) it did not obtain excess liability coverage that would apply in the event of the primary carrier's insolvency. For both the negligence and breach of contract causes of action, Collins alleged that it was damaged based on the fees and costs associated with its defense, its cross-complaint and the defense of its surety.

GEICO demurred to both the negligence and breach of contract causes of action in Collin's first amended cross-complaint. With respect to the negligence cause of action, GEICO argued that the economic loss rule barred the claim because under that rule a party may not recover in tort if it has suffered only economic harm and the duty breached is not independent of the opposing party's contractual obligations. (*Aas v. Superior Court* (2000) 24 Cal.4th 627, 643; *Erlich v. Menezes* (1999) 21 Cal.4th 543, 552 (*Erlich*); *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 989-990 (*Robinson Helicopter*).)[4] With respect to the breach of contract cause of action, GEICO argued that

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4 Under the economic loss rule, "'[c]onduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law.'" (*Robinson Helicopter*, *supra*, 34 Cal.4th at p. 989.) "'"'An omission to perform a contract obligation is never a tort, unless that omission is also an omission of a legal duty.'"'" (*Erlich*, *supra*, 21 Cal.4th at p. 551.) Thus, "'[t]ort damages have been permitted in contract cases where a breach of duty directly causes physical injury . . . ; for breach of the covenant of good faith and fair dealing in insurance contracts . . . ; for wrongful discharge in violation of fundamental public policy . . . ; or where the contract was fraudulently induced[.]' . . . '[I]n each of these cases, the duty that gives rise to tort liability is either completely independent of the contract or arises

the terms of the contract had not been adequately pled. The trial court sustained the demurrer with leave to amend. It ruled that the economic loss rule barred the negligence cause of action because Collins had not alleged a breach of duty independent from the contract. It also ruled that the breach of contract cause of action failed because Collins had not sufficiently alleged the terms of the contract.

Collins then filed a second amended cross-complaint, followed by a third amended cross-complaint. Instead of pleading a negligence cause of action, the second and third amended cross-complaints alleged only that GEICO was liable for breach of contract.[5] The third amended cross-complaint stated that Collins had been damaged by the alleged breach of contract in that "Collins has suffered damages as a result of GEICO's breach of the OCIP contracts which include but are not limited to loss of the benefit of the bargain and other uninsured out-of-pocket losses and expenses, all in an amount according to proof at the time of trial." GEICO filed a demurrer to the third amended cross-complaint, which the trial court sustained with leave to amend, ruling that "the damage allegations are uncertain as to what uninsured losses Collins is suffering."

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from conduct which is both intentional and intended to harm.'" (*Robinson Helicopter*, at p. 989.)

[5] GEICO was also included in the declaratory relief cause of action, which was asserted against most of the numerous parties to the second and third amended cross-complaints. The trial court sustained a demurrer to the declaratory relief cause of action as to GEICO in the third amended cross-complaint with leave to amend, and the same cause of action was finally dismissed by the trial court when it eventually sustained GEICO's demurrer to Collins's fourth amended cross-complaint, ruling that it was superfluous of the breach of contract cause of action. The disposition of the declaratory relief cause of action does not appear to be an issue on appeal.

In response, Collins filed a fourth amended cross-complaint, alleging breach of contract against GEICO with additional allegations about the damages it had suffered, or would suffer, due to the breach.[6] The trial court sustained GEICO's demurrer to the fourth amended cross-complaint without leave to amend. It ruled that although "Collins has alleged it suffered a variety of damages arising out of GEICO's alleged failure to procure the OCIP," those "damage allegations are insufficient because they are either not recoverable for the breach alleged or have not yet been incurred." The trial court entered a judgment of dismissal of Collins's claims against GEICO, and Collins filed a notice of appeal from that judgment.

2. *The Litigation of Tower Glass's Cross-complaint*

Tower Glass filed an original and first amended cross-complaint against numerous cross-defendants, including GEICO. When Tower Glass filed a second amended cross-complaint, several of the cross-defendants objected. The trial court directed Tower Glass to file a motion for leave to file a third amended cross-complaint and directed the cross-defendants not to answer the second amended cross-complaint.

Tower Glass accordingly filed a motion for leave to amend, attaching a proposed third amended cross-complaint. The proposed third amended cross-complaint contained

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[6] Collins specified as its damages: "loss of the benefit of the bargain and other uninsured out-of-pocket losses and expenses, including without limitation, contractual price credits/reductions for insurance premiums, deductibles, unreimbursed costs of defense and corporate counsel fees and costs, and all damages recovered by GEICO against Collins whether by settlement, judgment or otherwise which are not covered, in whole or in part by Collins's own insurance, and which would have been covered under the OCIP, all in an amount according to proof at the time of trial."

causes of action against GEICO for negligence, negligent misrepresentation and breach of contract. Each of the three causes of action alleged that GEICO was liable for its purported mishandling of the OCIP.

GEICO opposed Tower Glass's motion for leave to amend, arguing that the three proposed causes of action against it failed to state a cause of action. With respect to the negligence cause of action, GEICO argued that the economic loss rule barred the claim, citing the trial court's earlier ruling sustaining the demurrer to the negligence claim in Collin's first amended cross-complaint. GEICO objected to the negligent misrepresentation cause of action on the ground that Tower Glass had not identified any affirmative misstatements of fact. It objected to the breach of contract cause of action on the ground that Tower Glass had not identified any recoverable damages.

The trial court granted Tower Glass leave to amend to file an amended cross-complaint, but addressed in its order the merits of the causes of action against GEICO as pled in the proposed third amended cross-complaint attached to the motion to amend. The trial court ruled (1) the economic loss rule barred the negligence cause of action because "Tower Glass has not alleged a breach of a duty independent from the contract"; (2) the negligent misrepresentation cause of action failed because "all the 'misrepresentations' [alleged in the proposed third amended complaint] are omissions, which cannot serve as the basis for a negligent misrepresentation claim"; and (3) the breach of contract cause of action failed because "Tower Glass has not alleged any

damages arising from the breach of contract."[7] The trial court stated, "Tower Glass may file a Third Amended Cross-Complaint[;] however, it should amend the first three causes of action [i.e., the causes of action against Tower Glass] to state a claim, if it is able. If Tower Glass chooses to file the Third Amended Cross-complaint submitted with the moving papers without modification and GEICO is successful in demurring to the pleadings on the same grounds addressed in this ruling, the court will consider imposing sanctions."

Tower Glass filed a third amended cross-complaint, which contained substantial modifications to the proposed third amended cross-complaint in each of the three causes of action pled against GEICO. In the negligence cause of action, Tower Glass added two pages of case citations and legal argument to explain why it believed the economic loss rule did not apply. Specifically, citing *Butcher v. Truck Insurance Exchange* (2000) 77 Cal.App.4th 1442, 1461, and *Third Eye Blind, Inc. v. Near North Entertainment Ins. Services, LLC* (2005) 127 Cal.App.4th 1311, 1323, among other cases, Tower Glass alleged that an exception to the economic loss rule existed for the "failure to procure promised insurance." In the negligent misrepresentation cause of action, Tower Glass added over two pages of allegations, stating, among other things, that GEICO made

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[7] The proposed third amended cross-complaint alleged that Tower Glass's damages as a result of GEICO's breach of contract consisted of: (1) "[t]he amount deducted from [Tower Glass's] own insurance premiums for the insurance GEICO was to provide under the OCIP"; (2) deductibles Tower Glass paid to obtain coverage under its own insurance policies; (3) "[t]he loss of the benefit of the bargain to Tower [Glass] under the OCIP . . ."; and (4) "[t]he negative impact that this claim has had on Tower[Glass]'s insurability in the future . . . ."

affirmative misrepresentations about the OCIP. In the breach of contract cause of action, Tower Glass added several sentences explaining the damages associated with GEICO's alleged breach of contract, including "[t]he costs of defense incurred by Tower [Glass] — prior to participation by Tower[Glass]'s own carriers" and "[t]he post-tender costs of defense incurred, but not yet paid, by Tower [Glass] which are currently being funded by insurers under Reservation of Rights to deny coverage and seek reimbursement from Tower [Glass]."

GEICO filed a demurrer to the third amended cross-complaint, arguing that the allegations still did not state a claim. GEICO also filed a motion for sanctions under Code of Civil Procedure section 128.7 against Tower Glass and its attorneys, Campbell, Volk and Lauter. GEICO argued that sanctions were warranted because the third amended cross-complaint was not supported by existing law, ignored prior orders of the trial court and was presented primarily for an improper purpose.

The trial court sustained the demurrer to the third amended cross-complaint without leave to amend. The trial court (1) ruled that the economic loss rule applied to the negligence and negligent misrepresentation causes of action, rejecting the case law relied upon by Tower Glass for its theory that GEICO breached an independent tort duty to produce promised insurance; (2) rejected the negligent misrepresentation cause of action on the additional ground that many of the alleged misrepresentations were not affirmative misstatements; and (3) ruled that the breach of contract cause of action failed because Tower Glass did not allege that GEICO had agreed to any of the contractual obligations that Tower Glass contended were breached.

The trial court granted GEICO's motion for sanctions, stating that it did so "[d]ue to Tower Glass'[s] failure to serious[ly] consider the court's previous ruling, causing a waste of judicial resources . . . ." The trial court imposed sanctions on Tower Glass's attorneys, but not on Tower Glass. The amount of the sanctions award was $12,504, representing the attorney fees incurred by GEICO in responding to the third amended cross-complaint.

Subsequently, the parties appeared ex parte before the trial court to point out that while GEICO's demurrer to Tower Glass's third amended cross-complaint was pending, Tower Glass filed a superseding fourth amended cross-complaint, which amended allegations with respect to a cross-defendant other than GEICO. Pursuant to the parties' stipulation, the trial court ordered that its ruling sustaining GEICO's demurrer to the third amended cross-complaint without leave to amend would also apply to the fourth amended cross-complaint.

The trial court entered a judgment of dismissal with respect to Tower Glass's fourth amended cross-complaint against GEICO, and Tower Glass filed a notice of appeal.

Along with its appeal, Tower Glass also filed a petition for a peremptory writ of mandate. Tower Glass argues that in the event we conclude that we do not have jurisdiction over its appeal, we should review on a petition for a writ of mandate whether

the trial court erred in sustaining GEICO's demurrer to the fourth amended cross-complaint and imposing sanctions on Tower Glass's attorneys.[8]

Collins's and Tower's appeals have both been assigned to a single appellate case number, and we thus address them together. Collins has not filed its own appellate brief, but instead has filed a one-sentence joinder to Tower Glass's opening appellate brief.

II

DISCUSSION

A. *The Judgments from Which Collins and Tower Glass Appeal Are Not Final Appealable Judgments*

We are first confronted with the issue of whether we lack jurisdiction over the appeals filed by Collins and Tower Glass from the dismissal of their cross-complaints on the ground that the judgments from which they appeal lack finality.

"[A]n appeal cannot be taken from a judgment that fails to complete the disposition of all the causes of action between the parties . . . ." (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743.) Thus, when a judgment resolves a cross-complaint but does not resolve a complaint pending between the same parties, the judgment is not final and thus not appealable. (*Lemaire v. All City Employees Assn.* (1973) 35 Cal.App.3d 106, 109-110; see also *Angell v. Superior Court* (1999) 73 Cal.App.4th 691, 698.)

As Tower Glass acknowledges, claims between it and GEICO are still pending in GEICO's complaint, and thus the ruling sustaining GEICO's demurrer to Tower Glass's

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8 Collins has not filed a petition for peremptory writ of mandate.

cross-complaint would not ordinarily constitute an appealable final judgment. Tower Glass argues, however, that the ruling is appealable under cases holding that "[w]hen a party brings an action *in multiple capacities*, a judgment determining that party's rights in one capacity may be final even though the action is still pending on a claim brought in a different capacity." (*First Security Bank of Cal. v. Paquet* (2002) 98 Cal.App.4th 468, 474 (*First Security Bank*), italics added.) According to Tower Glass, GEICO brought its complaint in the capacity of "a landowner seeking damages for construction defects," but was sued in the cross-complaint "as a *voluntary* insurer and procurer of insurance."

We reject Tower Glass's argument.[9] Tower Glass cites several cases in which courts have concluded that a party who participated in a lawsuit in multiple capacities could appeal even though other claims remained pending as to it and the respondent to the appeal. (*First Security Bank*, *supra*, 98 Cal.App.4th at p. 474; *Aetna Cas. Etc. Co. v. Pacific Gas & Elec. Co.* (1953) 41 Cal.2d 785, 786; *Dominguez v. City of Alhambra* (1981) 118 Cal.App.3d 237, 241.) However, none of those cases apply here because the multiple capacity at issue in all of them was the parties' involvement in the litigation both on its own behalf and in a *representative capacity* for others. (*First Security Bank*, at p. 474 [plaintiffs in a shareholder derivative action brought claims on behalf of the corporation, not themselves, and thus they could appeal the ruling on the cross-complaint that asserted claims against them as individuals only, even though the complaint asserting

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9 As Collins has not filed its own appellate brief, but has simply joined in Tower Glass's brief, our rejection of Tower Glass's argument applies also to the position advanced, through joinder, by Collins.

shareholder derivative claims was still pending]; *Aetna Cas. etc. Co.*, at p. 786 [a workers' compensation insurer, which asserted some causes of action on behalf of itself and some on behalf of the injured employee, could appeal a ruling as to a cause of action brought on behalf of the injured employee even though a cause of action brought on behalf of the insurer was still pending]; *Dominguez,* at p. 241 [in a personal injury and wrongful death action, a judgment disposing of the claim by the surviving spouse as executor of the decedent's estate was final even though claims by the spouse in her individual capacity and as guardian ad litem for the decedent's minor children were still pending]; *Daon Corp. v. Place Homeowners Assn.* (1989) 207 Cal.App.3d 1449 [claims brought by a homeowners' association on its own behalf were not brought in the same capacity as those it brought on behalf of individual homeowners].)

Here, GEICO is involved in the litigation only on behalf of itself. It has not sued Tower Glass in a representative capacity for someone else, and it has not been sued by Tower Glass in a representative capacity for someone else. Instead, GEICO sued Tower Glass as the owner of the Project, and it was sued by Tower Glass as the owner of the Project who agreed to provide insurance under the OCIP.[10] Tower Glass alleges that GEICO was acting in a different capacity in the complaint and the cross-complaint because the complaint focuses on its role as the "landowner seeking damages for construction defects," while the cross-complaint focuses on its role as "a *voluntary*

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10 The same observations apply with respect to Collins. GEICO has not sued Collins in a representative capacity for someone else, and it has not been sued by Collins in a representative capacity for someone else.

insurer and procurer of insurance." However, these two roles do not give rise to two different legal capacities, such as when a party represents both itself and another party. Instead, the two roles simply represent different aspects of GEICO's involvement, in its own capacity, as owner of the Project.

When a party has improperly attempted to appeal from a purported judgment on a cross-complaint, despite the pendency of the complaint, the proper procedure is for us to dismiss the appeal. (*Nicholson v. Henderson* (1944) 25 Cal.2d 375, 381 ["As no final judgment in this action has been rendered by the trial court, the appeal from the purported judgment on the cross-complaint is dismissed"].) Accordingly, we must dismiss the portion of Tower Glass's appeal that challenges the judgment in favor of GEICO on Tower Glass's fourth amended cross-complaint, and we must also dismiss Collins's appeal from the judgment in GEICO's favor on Collins's fourth amended cross-complaint.

B. *Tower Glass Lacks Standing to Appeal from the Order Imposing Sanctions on Its Attorneys*

Tower Glass also appeals from the orders imposing sanctions on its attorneys. Pursuant to Code of Civil Procedure section 904.1, subdivision (a)(12), an appeal may be taken from "an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000)." Thus, an award of sanctions may be appealed even without a final judgment having been entered in the action.

GEICO argues that because Tower Glass's attorneys have not filed a notice of appeal from the order imposing sanctions, we lack jurisdiction to review that order. As we will explain, we agree.

Only parties aggrieved by an order may appeal from it. (Code Civ. Proc., § 902.) An attorney subject to an order imposing sanctions has a separate right to appellate review. (*Imuta v. Nakano* (1991) 233 Cal.App.3d 1570, 1586.) Case law establishes that when a sanctions ruling is imposed only upon a party's attorney, the attorney is the aggrieved party with the right to appeal. (*Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 42-43.) Absent any attempt to appeal by the sanctioned party, the sanction ruling is not reviewable. (*Id*.) Similarly, courts have held that when a sanctions order is imposed jointly upon both an attorney and a client, but only the client appeals, the court lacks jurisdiction to review the sanctions order as to the attorney. (*Laborde v. Aronson* (2001) 92 Cal.App.4th 459, 465; *Taylor v. Varga* (1995) 37 Cal.App.4th 750, 761 & fn. 12 (*Taylor*).) According to these authorities, Tower Glass lacks standing to appeal from the order imposing sanctions solely upon its attorneys.

Tower Glass acknowledges this case law, but argues that we should instead follow *Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967, 974. In *Eichenbaum*, sanctions were ordered jointly against the plaintiff and the plaintiff's attorney, but a notice of appeal was filed only on behalf of the plaintiff. *Eichenbaum* reasoned that based on "the doctrine of liberal construction of a notice of appeal" (see Cal. Rules of Court, rule 8.100(a)(2)), it would "deem[] a notice that named only a party to include his attorney, who had filed the notice and against whom the sanctions had been assessed." (*Eichenbaum*, at p. 974.) In

doing so, *Eichenbaum* rejected the approach set forth in *Taylor, supra,* 37 Cal.App.4th at page 761, footnote 12, and purported to follow the approach of *Kane v. Hurley* (1994) 30 Cal.App.4th 859, 861, footnote 4 (*Kane*).

We do not find *Eichenbaum*'s analysis persuasive, and we do not follow it. First, although *Eichenbaum* purported to rely on *Kane, supra,* 30 Cal.App.4th 859, *Kane* does not support *Eichenbaum*'s holding. *Kane* did not permit an attorney to appeal a sanctions order when the attorney was not named in the notice of appeal. Instead, *Kane* stated that "[t]he notice of appeal was filed by appellant *on behalf of* [the attorney]." (*Id*. at p. 861, fn. 4.) Thus, it appears that the attorney in *Kane* was *named* in the notice of appeal, but simply had not filed a *separate* notice of appeal. In contrast, the attorney in *Eichenbaum* was not named in the notice of appeal. Second, *Eichenbaum*'s holding does not apply to this case because the order at issue in *Eichenbaum* applied *jointly* to the plaintiff and its attorneys; however, here the order was imposed *solely* on the attorneys for Tower Glass. *Eichenbaum* was able to consider the merits of the *joint* sanctions award because the plaintiff had filed a proper notice of appeal, but that is not the case here, as Tower Glass was not subject to the sanctions award.

In sum, because Tower Glass was not itself subject to the sanctions order, it is not an aggrieved party and lacks standing to appeal. We thus dismiss Tower Glass's appeal from the order imposing sanctions on its attorneys.

C. *Tower Glass's Petition for a Peremptory Writ of Mandate Is Denied*

Finally, we address the petition for a peremptory writ of mandate filed by Tower Glass. Tower Glass asks us to review both the trial court's order sustaining the demurrer

to the fourth amended cross-complaint and the order imposing sanctions on Tower Glass's attorneys. As we will explain, we exercise our discretion to deny the relief sought by Tower Glass.

With respect to the order imposing sanctions, Tower Glass's petition for a writ of mandate is inappropriate for the same reasons that Tower Glass's appeal of that order was inappropriate. Simply, Tower Glass is not a party aggrieved by the order and thus lacks a beneficial interest in the subject of its writ petition. (See Code Civ. Proc., § 1086 [a writ of mandate may be issued only upon the petition of a "party beneficially interested"].)

With respect to the trial court's order sustaining GEICO's demurrer to Tower Glass's fourth amended cross-complaint, we deny writ relief because Tower Glass has not established that the circumstances warrant extraordinary relief. "The various reasons for granting extraordinary relief may be said, generally, to fall into two categories. The first category relies upon the public or jurisprudential significance of the issue presented. Writ relief is granted when the issue is of widespread interest; when conflicting trial court interpretations need resolution; when a novel or constitutional question is presented. The second category looks to the prejudice imposed upon the petitioning litigant, granting review because the lower court's determination imposes unusually harsh and unfair results for which ordinary appellate review is inadequate." (*Science Applications Internat. Corp. v. Superior Court* (1995) 39 Cal.App.4th 1095, 1100-1101 (*Science Applications Internat. Corp.*).) As we will explain, Tower Glass has not met its burden to establish that either of those categories is applicable here.

First, Tower Glass argues in a conclusory manner that it will be "subject to substantial and unnecessary burden" were we to deny writ relief. However, "general allegations, without reference to any facts, are not sufficient to sustain [the] burden of showing that the remedy of appeal would be inadequate." (*Phelan v. Superior Court* (1950) 35 Cal.2d 363, 370.) If Tower Glass is referring generally to the fact that it will have to wait until final judgment to obtain review of the ruling on GEICO's demurrer, we do not view that burden as sufficient to warrant writ review, as "the mere fact that appellate review will take much longer to resolve than writ review is not considered a basis for granting writ relief." (*Science Applications Internat. Corp.*, *supra*, 39 Cal.App.4th at p. 1101.) Tower Glass simply has not met its burden to show that the "lower court's determination imposes unusually harsh and unfair results for which ordinary appellate review is inadequate." (*Ibid*.)

Second, Tower Glass also argues that we should grant relief because the writ presents "a concern of considerable importance to the public" in that it raises issues concerning an OCIP, which is "a novel form of insurance." Tower Glass also contends that the economic loss rule, which is implicated here, "is of considerable interest and importance to the public, bench, and bar." Although the issues presented by Tower Glass's writ petition may hold some interest for members of the public, we do not view the resolution of those issues to be of such importance or urgency that they warrant consideration at this time rather than during the course of an appeal filed after the entry of final judgment.

DISPOSITION

The appeals of Tower Glass and Collins are dismissed. Tower Glass's petition for a peremptory writ of mandate is denied.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.